

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

TENTATIVE ORDER NO. R9-2005-0173
ADMINISTRATIVE ASSESSMENT OF CIVIL LIABILITY
AGAINST

METROPOLITAN TRANSIT SYSTEM

VIOLATIONS
OF
STATE WATER RESOURCES CONTROL BOARD
ORDER NO. 99-08-DWQ

The San Diego Regional Water Quality Control Board (hereafter Regional Board), having received an offer by the Metropolitan Transit System (hereafter MTS or Discharger) to waive its right to a hearing regarding violations alleged in Complaint No. R9-2005-0062 (Complaint) dated March 17, 2005, and settle its civil liability for any violations alleged therein by paying Civil Liability in the amount of \$150,000 (instead of the \$500,000 recommended in the Complaint), and having provided public notice thereof and not less than thirty (30) days for public comment on the settlement offer, and having received no comments objecting to the settlement, and having considered the settlement offer, finds as follows:

1. The State Water Resources Control Board (hereafter State Board) has adopted statewide general waste discharge requirements for discharges of storm water runoff associated with construction activities involving disturbance of one acre of soil, or more. [*Order No. 99-08-DWQ, NPDES No. CAS000002* (Order).]
2. The MTS owns and operates a construction site known as the Mission Valley East Light Rail Transit Project site (MVE LRT). The MVE LRT site, of 134 acres, spans approximately six miles aboveground from the community of Grantville in San Diego, underground through San Diego State University, and then back aboveground to the western side of La Mesa near Interstate 8. The MTS filed a "Notice of Intent," as required by Section A.2. of Order No. 99-08-DWQ on May 29, 2001 (WDID No. 9 37S315837).
3. The MTS failed to implement or maintain Best Management Practices (BMPs) set forth in its Storm Water Pollution Prevention Plan, in violation of section C.2 of the Order. The failure to install necessary BMPs resulted in unauthorized discharges of sediment to the City of San Diego's Municipal Separate Storm Sewer System (MS4) and Alvarado Creek, in violation of section A.2 of the Order. Sewage was also discharged to waters of the state from the MVE LRT site to Alvarado Creek, in violation of State Board Order No. 99-08-DWQ section A.2.
4. Consideration of the factors prescribed in California Water Code Section 13385(e) based upon information available to the Regional Board and the settlement offered by MTS supports assessment of civil liability in the amount of \$150,000 for the MTS. In addition

to the factors considered by the Executive Officer in recommending an assessment of civil liability in the amount of \$500,000, the Regional Board considered the cost of preparing for and prosecuting a public hearing on the allegations in Complaint No. R9-2005-0062, the possible cost of responding to any request by MTS for administrative or judicial review of an order assessing the recommended liability, the current compliance status of MTS at the MVE LRT project site, assurances regarding implementation of BMPs at future projects of MTS and SANDAG, the deterrent effect of the reduced liability, and the ability of the Regional Board to recover its staff costs from the amount tendered.

5. By accepting the settlement offer tendered by the MTS, involving payment of less than the recommended civil liability without the need for a hearing, the Regional Board will conserve valuable staff resources that would have been allocated to preparation for the hearing and responding to any administrative or judicial review requested by the Discharger.
6. The Discharger completed the MVE LRT project in June 2005 and the site is now in compliance with the Order, and MTS has agreed to ensure full compliance with the Order at all other current and future sites owned by the Discharger.
7. Furthermore, the reduced amount of liability tendered by the Discharger is sufficient to deter the Discharger from future non-compliance, and should act as a deterrent to non-compliance by other agencies, such as SANDAG (San Diego Association of Governments), as the new developer of transit related capital improvement projects in the region.
8. The MTS published a notice in the San Diego Union on June 27, 2005, notifying the public of a 30-day review period and soliciting public comments on the terms of the settlement.
9. The Regional Board incurred a total cost of \$45,000, which includes cost for investigation, preparation of enforcement documents, and communication with the discharger and interested parties regarding the enforcement action.
10. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000 et seq.) in accordance with section 15321, Chapter 3, Title 14, California Code of Regulations.
11. Though the MTS neither admits nor denies liability for the allegations of the Complaint, this Order resolves all liability which was alleged or could have been alleged in that Complaint.

IT IS HEREBY ORDERED pursuant to an offer of settlement by MTS that:

1. Civil liability is imposed on the Metropolitan Transit System in the amount of one hundred fifty thousand dollars (\$150,000) as detailed below.
2. The MTS will tender \$150,000 to the Regional Board by October 14, 2005. Payment shall be made payable to the State Water Resources Control Board:
 - a. \$100,000 to be paid into the State Water Pollution Cleanup and Abatement Account.
 - b. \$50,000 for a Supplemental Environmental Project (SEP) to improve water quality within the San Diego River watershed, to be approved by the Regional Board at a later date.
3. The MTS and SANDAG will commit to comply with the State Board Order No. 99-08-DWQ, NPDES General Permit NO. CAS000002, Waste Discharge Requirements for discharges of Storm Water Runoff Associated with Construction Activity at all existing and future MTS transit facility construction sites, as detailed in the formal settlement offer from the MTS dated July 19, 2005.
4. The MTS will commit to have all MTS transit construction projects subject to the requirements of the General Permit staffed with their own or SANDAG professional staff as the Resident Engineer or Field Construction Manager, as detailed in the formal settlement offer from the MTS dated July 19, 2005.
5. For a period of at least 5 years after September 14, 2005, MTS and SANDAG will commit to enhancement of staff awareness, as detailed in the formal settlement offer from MTS dated July 19, 2005, through their participation in:
 - a. A one-time comprehensive training course for Project Development Staff on storm water compliance.
 - b. Subsequent yearly update training sessions for key Construction Staff.
6. Prior to June 1, 2006, SANDAG will conduct a workshop for the purpose of developing and/or refining construction language and support on future MTS transit related improvement projects, as detailed in the formal settlement offer from the MTS dated July 19, 2005.

I, John H. Robertus, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order imposing civil liability assessed by the California Regional Water Quality Control Board, San Diego Region, on September 14, 2005.

TENTATIVE

JOHN H. ROBERTUS
Executive Officer